

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of Channel Islands Telephone Company (U7068C) to expand its existing certificate of public convenience and necessity to include full facilities-based authority to construct telecommunications facilities to serve certain previously-unserved Channel Islands.

Application 10-02-009
(Filed February 1, 2010)

DECISION GRANTING MOTION TO WITHDRAW**1. Summary**

This decision grants Channel Islands Telephone Company's unopposed motion to withdraw its application to expand its existing certificate of public convenience and necessity to include full facilities based authority to construct telecommunications facilities to serve the Channel Islands. No hearings were conducted. Applicant must reference Application 10-02-009 should it subsequently seek authorization to expand its existing limited facilities-based authority to include full facilities-based authority to construct telecommunication facilities in the future.

2. Factual Background

Channel Islands Telephone Company (Applicant), a California company currently holds a Certificate of Public Convenience and Necessity (CPCN)

authorizing the company to provide limited facilities-based local exchange and interexchange services in this state.¹

In Decision (D.) 08-05-007, the California Public Utilities Commission (Commission) granted Applicant a CPCN,² which authorized the provision of limited facilities-based interexchange services only but denied authority to construct facilities (other than within existing structures). A full facilities-based CPCN is required when a telecommunications provider wishes to perform construction other than very minor activities, such as the installation of switches in existing buildings or structures.

At that time, however, Applicant had only made preliminary siting determinations and noted that the final scope and configuration of Applicant's system would depend on the availability of funding for the project under the Commission's Rural Telecommunications Infrastructure Grant program and on approval by the National Park Service. Therefore, Applicant was not able to provide a detailed environmental assessment as part of its prior application and proposed instead, that the procedure adopted by D.06-04-030 for addressing the construction of distributed antenna system (DAS) networks be utilized.

In D.06-04-063, we found that facilities-based DAS projects were of a limited nature and would, in almost all circumstances, most likely qualify for an exemption from CEQA. The Commission determined that review of claimed CEQA exemptions for this type of project was adequate for the Commission's purposes as a Lead Agency under CEQA and in the public interest. However,

¹ See D.08-05-007.

² Applicant is authorized to provide limited facilities based interexchange service by D.08-05-007.

because of the potentially environmentally sensitive setting in the Channel Islands, D.07-08-014 concluded that Applicant could not utilize the expedited process for this project. D.07-08-014 instead granted a limited facilities-based CPCN to Applicant to allow Applicant to meet the qualifications required to apply for the Rural Telecommunications Infrastructure Grant Program.

On February 2, 2010, Applicant applied for the approval to expand its existing CPCN authority to provide facilities-based telecommunications service to the previously unserved Channel Islands. On October 23, 2012, a Status Conference was held to ascertain the status of the environmental review and to request information regarding a proceeding pending before the Federal Communications Commission involving one of the Applicant's affiliates, North County Communications. Applicant provided the requested information.

On December 19, 2012, the assigned Administrative Law Judge (ALJ) found that the Applicant was listed as suspended on the California Secretary of State's website. Applicant failed to notify the Commission of its suspension.³ As a result, the assigned ALJ issued a ruling requiring Applicant to explain the basis for suspension by the California Secretary of State and the actions Applicant was required to take to lift the suspension. In addition, Applicant was required to provide evidence that the suspension had been lifted and it was again authorized to do business in California. On December 27, 2012, Applicant responded to the ALJ ruling. Applicant stated that its authority to operate in California had been suspended by the California Secretary of State for failure to file tax return forms

³ In order to be eligible for a CPCN, an entity must be authorized to conduct business in California.

along with its minimum franchise tax payments.⁴ Applicant submitted its request for revival to the California Secretary of State on December 19, 2012. Applicant provided a copy of its Certificate of Status showing it was listed as an active corporation in “Good Standing” as of December 20, 2012.

During the pendency of the instant Application, the Commission was also considering Channel Islands project through the Commission’s Rural Telecommunications Infrastructure Grant program. Grant funding was ultimately denied.

On June 14, 2013, Applicant filed an amended application setting forth the changes to its proposed project resulting from the Commission’s denial of grant funding. On September 3, 2013, the Wishtoyo Foundation (Wishtoyo) protested the amended application arguing that procedural flaws prejudicially impacted Wishtoyo’s members and the Chumash People. The procedural flaws identified included Applicant’s failure to properly notice the Amended Application and failure to conduct government to government consultation with the federally recognized Santa Ynez Band of Chumash Indians. In addition, Wishtoyo argued that the Commission must consider the harms the proposed project poses to the Chumash cultural landscape, including harms to Chumash culture, cultural resources, cultural sites, religious practices, and religious resources on the Channel Islands. Finally, Wishtoyo contended the proposed project would harm island wildlife and the environment.

On October 18, 2013, a Prehearing Conference was held to set the proceeding schedule setting tentative dates for Public Participation Hearings to

⁴ Channel Islands Telephone Company states the minimum tax payments were made regularly.

solicit community comment, evidentiary hearings, an order to show cause hearing date, and establish a briefing schedule. In addition, the Prehearing Conference examined which issues were properly within the scope of the proceeding. On November 1, 2013, Applicant moved to withdraw the Amended Application. No response to the Motion to Withdraw was filed.

3. Discussion and Analysis

Applicant's motion to withdraw is granted. The motion is unopposed and no evidentiary hearings have been conducted. Dismissing the application at this time will conserve both the parties' and the Commission's resources.

We remind Applicant that its current CPCN authority allows Applicant to provide limited facilities-based services and does not include full facilities-based authority to construct telecommunications facilities. Applicant is directed to include a reference to Application (A.) 10-02-009 should it subsequently seek to expand its authority to provide full-facilities based service and must also disclose the failure to inform the Commission of its temporary suspension by the California Secretary of State during the pendency of A.10-02-009.

4. Categorization and Need for Hearing

In Resolution ALJ 176-3249, dated February 25, 2012, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearing were not necessary.

5. Uncontested

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comments is waived.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commission and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicant filed this application seeking an expansion of its existing limited-facilities authority to provide full-facilities based competitive local exchange telecommunications service on the Channel Islands in California.
2. The Wishtoyo Foundation protested A.10-02-009 as amended.
3. An evidentiary hearing was not held in this matter.
4. Dismissing the Application at this time will conserve both the parties, and the Commission's resources.

Conclusions of Law

1. Application 10-02-009 should be dismissed without prejudice to the Applicant reapplying for an expansion of its existing limited-facilities CPCN for authority to provide full-facilities based competitive local exchange service on the Channel Islands in California except that any such application must reference A.10-02-009 and disclose that Applicant had been temporarily suspended by the California Secretary of State during the pendency of that application.

O R D E R

IT IS ORDERED that:

1. Application (A.)10-02-009 is dismissed without prejudice to Channel Islands Telephone Company re-applying to expand its certificate of public convenience and necessity to provide full-facilities based telecommunications service except that any such application must reference A.10-02-009 and disclose

that Channel Islands Telephone Company authority to conduct business in California had been temporarily suspended by the California Secretary of State.

2. Application 10-02-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.